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CITY OF RICHMOND *v.* LYNCH & DUKE.

Jan. 17, 1907.

[56 S. E. 139.]

1. Municipal Corporations—Officers—Holding Other Office—Validity of Ordinance.—Since the office of member of the common council of a city is an elective office, under Const. art. 8, § 121 (Va. Code 1904, p. ccxxxix), and article 2, § 31 (Va. Code 1904, p. ccxv), declares what political positions shall be incompatible with that office, a city ordinance, making it unlawful for any city official to serve as a member of any standing committee of any political party, is invalid as to a member of the common council.

2. Same—Charter Provision.—The provision of a city charter that the city council shall have the control of the fiscal and municipal affairs of the city and of all property belonging to it, and may make such ordinances relating to it as it shall deem necessary, does not authorize an ordinance making it unlawful for any city official to serve as member of any standing committee of any political party.

3. Same—Ordinance—Violation—Motion to Quash Summons.—In a prosecution for violation of a city ordinance, its validity can be drawn in question by motion to quash the summons.

VAUGHAN MACH. CO. *v.* STANTON TANNING CO.

Jan. 17, 1907.

[56 S. E. 140.]

1. Trial—Instructions—Undue Prominence.—In an action on a note given for a machine sold defendant and shipped to it f. o. b. at shipping point by plaintiff, and which was injured when received by defendant, a part of the evidence tended to show negligence in loading on the cars. Held, that an instruction that, if the machine was properly loaded and was in proper condition for transportation, the jury must find for plaintiff, otherwise they must find for defendant, was erroneous as leaving out of view much important evidence bearing on the issue, and the liability of the carrier to the consignee for injuries from negligent loading and those received during transportation.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, § 613.]

2. Same.—An instruction directing the jury to find for plaintiff or defendant, based on a partial view of the evidence, is erroneous.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, § 613.]